

# Summary explanation of changes to Michigan Eminent Domain Laws (changes effective December 23, 2006)

## **HB 5060 (2006 PA 367)**

- Implements Constitutional Amendment
- Deletes Reference to “Public Purpose” and “Benefit of the Public”
- Replaces with “Public Improvement” or “Public Use”
- Necessity of Taking for Public Use
- Prohibits Transfer to Private Entity for Economic Development or Enhancement of Tax Revenue

## **HB 5060 (2006 PA 367)**

- Burden of Proof
  - Agency must prove by a Preponderance of Evidence
  - Blight – Clear and Concise Evidence
- Existing rights, grants, or benefits afforded property owners preserved and shall not be abrogated
- Defines Blighted Property

## **HB 5060 (2006 PA 367)**

- Individual’s Principle Residence – Not Less than 125% of Fair Market Value
  - Principle residential structure must be taken
  - Remaining contiguous property less than minimum lot size under zoning ordinance

## Principle Residence Acquisition

### ■ GFO

- 125%
- Loss of Property Tax Exemption

### ■ Relocation Assistance

- Replacement Housing Supplement
- Moving Allowance
- Incidental Costs
- Increased Interest Differential

## Acquisition of Principle Residence

- Appraisal– 100% of Fair Market Value
- Appraisal Review– 100% of Fair Market Value
- Agency GFO Must:
  - Apply 1.25 Factor (125% of FMV)
  - In addition, Loss of Homeowner Principle Residence Exemption
  - Approve amount before GFO made

**Fair Market Value (FMV) =  
\$100,000**

Acquisition Cost = FMV x 1.25 Factor

$$\text{\$100,000} \times 1.25 = \text{\$125,000}$$

Price of Comparable D.S.S. Dwelling	<b>\$115,000</b>
Less Acquisition Cost	<b>- <u>\$125,000</u></b>
Housing Supplement	<b>- 0 -</b>

**Fair Market Value (FMV) =  
\$50,000**

Acquisition Cost = FMV x 1.25 Factor

$$\text{\$50,000} \times 1.25 = \text{\$62,500}$$

Price of Comparable D.S.S. Dwelling	<b>\$75,000</b>
Less Acquisition Cost	<b>- \$62,500</b>
Housing Supplement	<b>\$12,500*</b>

\*If the Housing Supplement is greater than zero, then justification must be documented on the Replacement Housing Determination.

**Fair Market Value (FMV) =  
\$250,000**

Acquisition Cost = FMV x 1.25 Factor

$$\text{\$250,000} \times 1.25 = \text{\$312,500}$$

Price of Comparable D.S.S. Dwelling	<b>\$260,000</b>
Less Acquisition Cost	<b>- \$312,500</b>
Housing Supplement-	<b>0-</b>

**HB 5817 (2006 PA 369)**

- Amends MCL 213.352 Moving Allowance
- Raises allowance from \$1000 to \$5200
- Residential Leasehold Occupant less than 3 months can elect Fixed Moving Allowance of \$3500
- Attorney Fees for successful action to recover Fixed Payment or Allowance
- Federal Regs trump any conflicts

## **HB 5818 (2006 PA 370)**

- Amends MCL 213.66
- Attorney Fees for unsuccessful Necessity Challenges:
  - Involving Relocation of Indigent Person
  - Challenge must be Reasonable and Good Faith
  - Does not apply to "Government-Owned" Transportation Projects

## **HB 5819 (2006 PA 371)**

- Amends MCL 213.59
- EJC Payment 30 days Before Dispossession
- Disputes resolved at Apportionment Hearing Before Dispossession
- Residential Occupant has 180 days after Payment of Moving Expenses to Relocate
- Fed Relocation Regs take precedence

## **HB 5820 (2006 PA 438)**

- No Escrow of Environmental Remediation Costs for Owner's Principle Residence:
  - Principle residential structure actually taken
  - Remaining contiguous property less than minimum lot size under zoning ordinance

## HB 5821 (2006 PA 439)

- Agency required to pay Loss of Homeowner's Principle Residence Exemption
- Additional amount part of GFO:
  - SEV minus TV
  - Multiply by Total Property Tax Millage
  - Multiply that amount by Number of Years owner has owned Principle Residence (up to 5 years)

### Example – Loss of Exemption

$$\begin{array}{r} \text{SEV } \$50,000 \\ - \text{ TV } \$42,000 \\ \hline \$ 8,000 \\ \times \quad .045 \text{ (45 mills)} \\ \hline \times \quad \underline{5 \text{ Years (Max)}} \\ \hline \$ 1,800 \end{array}$$

## HB 5821 (2006 PA 439)

- If Taking might require Relocation, Agency to provide Written Notice:
  - Outline Occupant's Legal Rights
  - Leasehold Interest less than 6 months
  - Residential Occupant cannot be displaced
    - Until after Moving Expenses/ Allowances Paid
    - Reasonable Opportunity to Relocate
    - Fed Regs Trump [HB 5817 MCL213.352(4)]
    - Comparable Replacement Dwelling 49 CFR 24.2

## HB 5821

- If Owner believes Agency did not include  
“1 or more items of compensable property or  
damage” (DELETED)
- Replaced by:  
“If Owner claims the Agency is taking  
property other than the property described  
in the GFO” or “damage caused by the  
Taking, apart from the value of the property  
taken, and not described in the GFO”
- Owner shall file claim

## HB 5821

- Claim shall state nature and substance of  
Property Damage (sufficient detail)
- 180 days after complaint served or later by  
Court for Reasonable Cause
- Owner's Appraisal may serve as Written  
Claim if timely
- Claims barred if not timely
- Appraisal exchange within 90 days after  
Expiration of Claim Deadline or later by  
Court for Reasonable Cause

## HB 5821

- If Agency believes information is  
insufficient:
  - May request additional info from Owner
  - If info not provided, may ask Court to compel
  - Failure to provide after Court Order:
    - Court may assess sanctions, bar claim
    - Court may consider in determining  
Attorney Fees

## **HB 5821**

### Claim not Fully Accrued or Continuing in Nature

- Info then reasonably available
- Continuing duty to supplement as info becomes available
- Cutoff to supplement: 90 days before trial
- Court Extensions for Reasonable Cause
- Sanctions – Failure to provide supplementary info (Same as if failure to Comply with Court-ordered additional info)

## **HB 5821**

- New GFO if claims accepted by Agency (no time limit specified)
- Sum of GFO for Written Claims or disclosed in Discovery plus original GFO is basis for Attorney Fee (2 separate GFO's)
- Residential Tenant Leasehold less than 6 months – not a Compensable Claim

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2005**

**Introduced by Senator Stamas**

**ENROLLED SENATE  
JOINT RESOLUTION E**

A JOINT RESOLUTION proposing an amendment to the state constitution of 1963, by amending section 2 of article X, to restrict the power of state or local government to take private property by eminent domain for certain private purposes.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to restrict the power of state or local government to take private property by eminent domain for certain private purposes, is proposed, agreed to, and submitted to the people of the state:

**ARTICLE X**

Sec. 2. Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. Compensation shall be determined in proceedings in a court of record.

"Public use" does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph.

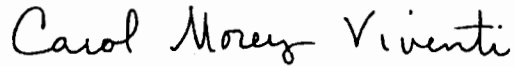
In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use.



Any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by this section, by statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the constitutional amendment that added this paragraph.

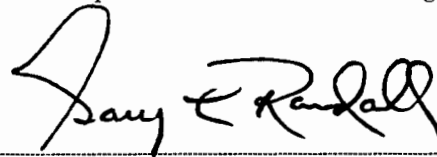
Resolved further, That the foregoing amendment shall be submitted to the people of the state at the next general election in the manner provided by law.

I hereby certify that on the thirteenth day of December, two thousand five, the foregoing joint resolution was agreed to by the Senate, by a two-thirds vote of all the Senators elected and serving.



Secretary of the Senate

I hereby certify that on the thirteenth day of December, two thousand five, the foregoing joint resolution was agreed to by the House of Representatives, by a two-thirds vote of all the Representatives elected and serving.



Clerk of the House of Representatives

Act No. 367  
Public Acts of 2006  
Approved by the Governor  
September 20, 2006  
Filed with the Secretary of State  
September 21, 2006  
EFFECTIVE DATE: Pending

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Steil, Elsenheimer, Jones, Green, Gosselin, Hune, Sheltroun, Nofs, Hoogendyk, Palmer, Robertson, Amos, Hummel, Stahl, Ball, Anderson, Vander Veen, Drolet, Rocca, Moolenaar, Pearce, Kooiman, Lemmons, III, Waters, Plakas, Stewart, Zelenko, Kolb, Newell, Adamini, Brown, Farrah, Pastor, Brandenburg, Bieda, Wojno, Acciavatti, Clack, Condino, Vagnozzi, Taub, Garfield, Gleason, Caswell, Shaffer, Ward, Byrum, Van Regenmorter, Sak, Nitz, Palsrok, Gillard, Casperson, Dillon, Baxter, Cheeks, Espinoza, Gonzales, Hildenbrand, David Law, Leland, Lemmons, Jr., Marleau, Mayes, Miller, Moore, Mortimer, Polidori, Proos, Schuitmaker and Spade**

## **ENROLLED HOUSE BILL No. 5060**

AN ACT to amend 1911 PA 149, entitled "An act to provide for the acquisition by purchase, condemnation and otherwise by state agencies and public corporations of private property for the use or benefit of the public, and to define the terms "public corporations," "state agencies" and "private property" as used herein," by amending section 3 (MCL 213.23).

*The People of the State of Michigan enact:*

Sec. 3. (1) Any public corporation or state agency is authorized to take private property necessary for a public improvement or for the purposes of its incorporation or for public use and to institute and prosecute proceedings for that purpose. When funds have been appropriated by the legislature to a state agency, a division of a state agency, the office of the governor, or a division of the office of the governor for the purpose of acquiring lands or property for a designated public use, the unit of a state agency to which the appropriation has been made is authorized on behalf of the people of the state of Michigan to acquire the lands or property either by purchase, condemnation, or otherwise. For the purpose of condemnation, the unit of a state agency may proceed under this act.

(2) The taking of private property by a public corporation or a state agency for transfer to a private entity is not a public use unless the proposed use of the property is invested with public attributes sufficient to fairly deem the entity's activity governmental by 1 or more of the following:

(a) A public necessity of the extreme sort exists that requires collective action to acquire property for instrumentalities of commerce, including a public utility or a state or federally regulated common carrier, whose very existence depends on the use of property that can be assembled only through the coordination that central government alone is capable of achieving.

(b) The property or use of the property will remain subject to public oversight and accountability after the transfer of the property and will be devoted to the use of the public, independent from the will of the private entity to which the property is transferred.

(c) The property is selected on facts of independent public significance or concern, including blight, rather than the private interests of the entity to which the property is eventually transferred.

(3) As used in subsection (1), "public use" does not include the taking of private property for the purpose of transfer to a private entity for either general economic development or the enhancement of tax revenue.

(4) In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking of private property because the property is blighted, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use.

(5) If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. In order to be eligible for reimbursement under this subsection, the individual's principal residential structure must be actually taken or the amount of the individual's private property taken leaves less property contiguous to the individual's principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance.

(6) A taking of private property for public use, as allowed under this section, does not include a taking for a public use that is a pretext to confer a private benefit on a known or unknown private entity. For purposes of this subsection, the taking of private property for the purposes of a drain project by a drainage district as allowed under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, does not constitute a pretext to confer a private benefit on a private entity.

(7) Any existing right, grant, or benefit afforded to property owners as of December 22, 2006, whether provided by the state constitution of 1963, by this section or other statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the 2006 amendatory act that added this subsection.

(8) As used in this section:

(a) "Blighted" means property that meets any of the following criteria:

(i) Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) Is an attractive nuisance because of physical condition or use.

(iii) Is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) Has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(v) Is tax reverted property owned by a qualified local governmental unit, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or this state shall not result in the loss to the property of the status as blighted for purposes of this act.

(vi) Is property owned or under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774, whether or not located within a qualified local governmental unit. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss to the property of the status as blighted for purposes of this act.

(vii) Is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(viii) Any property that has code violations posing a severe and immediate health or safety threat and that has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

(b) "Qualified local governmental unit" means that term as defined in section 2 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2652.

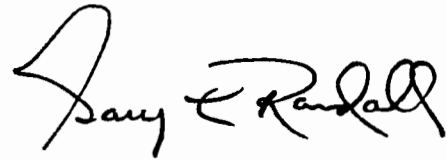
Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless both of the following occur:

(a) Senate Bill No. 693 of the 93rd Legislature is enacted into law.

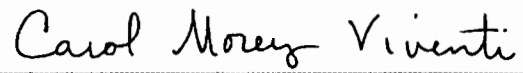
(b) Senate Joint Resolution E of the 93rd Legislature becomes part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved \_\_\_\_\_

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Governor

Act No. 369  
Public Acts of 2006  
Approved by the Governor  
September 20, 2006  
Filed with the Secretary of State  
September 21, 2006  
EFFECTIVE DATE: December 23, 2006

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Tobocman, Drolet, Jones, Gosselin, Stahl, Brandenburg, Baxter, Elsenheimer, Mortimer, Rocca, Lipsey, Acciavatti, Waters, Plakas, Anderson, Stewart, Zelenko, Kolb, Kooiman, Meyer, Hummel, Hunter, Farrah, Pastor, Bieda, Wojno, Condino, Vagnozzi, Amos, Garfield, Gleason, Caswell, Shaffer, Hoogendyk, Nofs, Ward, Byrum, Steil, Sak, Moolenaar, Palsrok, Gillard, Casperson, Ball, Cheeks, Espinoza, Gonzales, Hildenbrand, Kahn, Leland, Lemmons, III, Lemmons, Jr., Marleau, Mayes, McDowell, Moore, Palmer, Pearce, Polidori, Proos, Schuitmaker, Sheltrown, Alma Smith and Spade**

## **ENROLLED HOUSE BILL No. 5817**

AN ACT to amend 1965 PA 40, entitled "An act to authorize and require public agencies to pay allowances for the expense of moving personal property from real property acquired for public purposes," by amending section 2 (MCL 213.352), as amended by 1991 PA 21.

*The People of the State of Michigan enact:*

Sec. 2. (1) An occupant who vacates real property on or after May 15, 1965, pursuant to the provisions of a written agreement to purchase the property or pursuant to the provisions of a written agreement for possession and use of the property or pursuant to the transfer of title to the property in condemnation proceedings, shall be reimbursed by the public agency for the reasonable and necessary moving expense for moving his or her personal property not more than 50 miles, subject to the following conditions:

(a) The maximum payment to an individual or family shall not exceed \$5,250.00. The maximum payment to a business, including the operation of a farm, or a nonprofit organization shall not exceed \$15,000.00.

(b) An individual or a family may elect to receive a fixed moving allowance, in lieu of actual moving expense, based on a schedule of payments established by the acquiring agency taking into consideration the maximum payment allowed, the number of rooms and other factors.

(c) Instead of any other payment under this act, other state law, or federal law, an occupant of residential property who has a leasehold interest of less than 6 months is entitled to elect a fixed payment of \$3,500.00. If the occupant does not elect this fixed payment, the occupant may receive a moving allowance as determined under subdivisions (a) and (b).

(d) Except as provided in section 9 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.59, payment shall not be made to an occupant until after the occupant has vacated the real property unless the payment is required to enable the occupant to relocate.

(2) As used in this section, "personal property" does not include a fixture, whether removable or not.

(3) The court may award reasonable attorney fees and costs to an individual described in subsection (1)(c) who brings a successful action to recover a fixed payment or a moving allowance under subsection (1).

(4) Notwithstanding subsections (1) to (3), if the public agency is complying with applicable federal regulations and procedures regarding moving allowances and relocation requirements, those federal regulations and procedures take precedence over any conflicting provisions in this section.

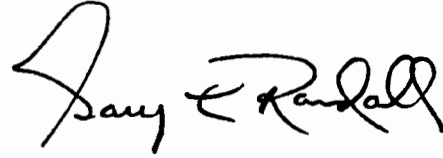
Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

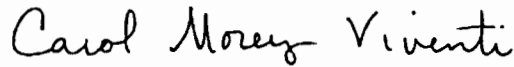
(a) House Bill No. 5818.

(b) House Bill No. 5819.

This act is ordered to take immediate effect.



\_\_\_\_\_  
Clerk of the House of Representatives



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Secretary of the Senate

Approved \_\_\_\_\_

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Governor

Act No. 370  
Public Acts of 2006  
Approved by the Governor  
September 20, 2006  
Filed with the Secretary of State  
September 21, 2006  
EFFECTIVE DATE: December 23, 2006

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Drolet, Jones, Gosselin, Tobocman, Stahl, Brandenburg, Baxter, Elsenheimer, Rocca, Mortimer, Huizenga, Acciavatti, Lipsey, Waters, Anderson, Stewart, Zelenko, Kolb, Kooiman, Meyer, Hummel, Williams, Brown, Hunter, Farrah, Pastor, Bieda, Wojno, Clack, Condino, Vagnozzi, DeRoche, Taub, Accavitti, Amos, Stakoe, Hune, Gleason, Caswell, Shaffer, Nofs, Ward, Byrum, Steil, Sak, Sheen, Moolenaar, Palsrok, Gillard, Dillon, Ball, Booher, Cheeks, Espinoza, Gonzales, Hildenbrand, Kahn, David Law, Leland, Lemmons, III, Lemmons, Jr., Marleau, Mayes, McDowell, Moore, Palmer, Pavlov, Pearce, Polidori, Schuitmaker, Sheltrown, Alma Smith and Spade**

## **ENROLLED HOUSE BILL No. 5818**

AN ACT to amend 1980 PA 87, entitled "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," by amending section 16 (MCL 213.66), as amended by 1996 PA 474.

*The People of the State of Michigan enact:*

Sec. 16. (1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

(2) If the property owner, by motion to review necessity or otherwise, successfully challenges the agency's right to acquire the property, or the legal sufficiency of the proceedings, and the court finds the proposed acquisition improper, the court shall order the agency to reimburse the owner for actual reasonable attorney fees and other expenses incurred in defending against the improper acquisition.

(3) If the amount finally determined to be just compensation for the property acquired exceeds the amount of the good faith written offer under section 5, the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of 1/3 of the amount by which the ultimate award exceeds the agency's written offer as defined by section 5. The reasonableness of the owner's attorney fees shall be determined by the court. If the agency or owner is ordered to pay attorney fees as sanctions under MCR 2.403 or 2.405, those attorney fee sanctions shall be paid to the court as court costs and shall not be paid to the opposing party unless the parties agree otherwise.

(4) If the agency settles a case before entry of a verdict or judgment, it may stipulate to pay reasonable attorney and expert witness fees.

(5) Expert witness fees provided for in this section shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of this section, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished

or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

(6) Except as provided in subsection (7), an agency is not required to reimburse attorney or expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings.

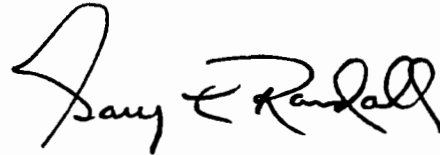
(7) In any matter under this act involving the relocation of an indigent person, other than a proceeding concerning the taking of property for the construction of a government-owned transportation project, the court may award reasonable attorney and expert witness fees attributable to an unsuccessful challenge to necessity or to the validity of the proceedings if the court finds that there was a reasonable and good faith claim that the property was not being taken for a public use. This subsection does not affect the right of an indigent person who successfully challenges the agency's right to acquire the property to recover attorney fees, ordinary or expert witness fees, and other expenses incurred in defending against the improper acquisition, as authorized by subsections (1) to (5). As used in this subsection, "indigent person" means an individual whose annual income is at or below 200% of the federal poverty guidelines published by the United States department of health and human services. This subsection does not apply after December 31, 2007.

Enacting section 1. This amendatory act takes effect December 23, 2006.

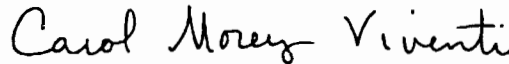
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 5817.
- (b) House Bill No. 5819.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor



Act No. 371  
Public Acts of 2006  
Approved by the Governor  
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**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Garfield, Drolet, Green, Jones, Gosselin, Tobocman, Stahl, Brandenburg, Baxter, Elsenheimer, Rocca, Mortimer, Huizenga, Lipsey, Acciavatti, Waters, Anderson, Stewart, Zelenko, Kolb, Kooiman, Meyer, Hummel, Hunter, Farrah, Pastor, Bieda, Wojno, Vagnozzi, Hune, Gleason, Caswell, Shaffer, Hoogendyk, Nofs, Ward, Byrum, Steil, Sak, Moolenaar, Palsrok, Gillard, Ball, Cheeks, Espinoza, Gonzales, Leland, Lemmons, III, Lemmons, Jr., Marleau, Mayes, McDowell, Moore, Pearce, Polidori, Proos, Schuitmaker and Spade**

# **ENROLLED HOUSE BILL No. 5819**

AN ACT to amend 1980 PA 87, entitled "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," by amending section 9 (MCL 213.59), as amended by 1996 PA 474.

*The People of the State of Michigan enact:*

Sec. 9. (1) If a motion for review under section 6 is not filed, upon expiration of the time for filing the motion for review, or, if a motion for review is filed, upon final determination of the motion, the court shall fix the time and terms for surrender of possession of the property to the agency and enforce surrender by appropriate order or other process. The court also may require surrender of possession of the property after the motion for review filed under section 6 has been heard, determined and denied by the circuit court, but before a final determination on appeal, if the agency demonstrates a reasonable need.

(2) If interim possession is granted to a private agency, the court, upon motion of the owner, may order the private agency to file an indemnity bond in an amount determined by the court as necessary to adequately secure just compensation to the owner for the property taken.

(3) If an order granting interim possession is entered, an appeal from the order or any other part of the proceedings shall not act as a stay of the possession order. An agency is liable for damages caused by the possession if its right to possession is denied by the trial court or on appeal.

(4) Repayment of all sums advanced shall be a condition precedent to entry of a final order setting aside a determination of public necessity.

(5) Although the court shall not order possession to be surrendered to the agency before it orders that the escrow be distributed under section 8(1) or (4) or retained under section 8(2), the court shall not delay or deny surrender of possession because of any of the following:

(a) A motion filed pursuant to section 6a, challenging the agency's decision to reserve its rights to bring federal or state cost recovery actions.

(b) A motion challenging the agency's escrow under section 8.

(c) An allegation that the agency should have offered a higher amount for the property.

(d) An allegation that the agency should have included additional property in its good faith written offer.

(c) Any other reason except a challenge to the necessity of the acquisition filed under section 6.

(6) The payment of escrow, as ordered under subsection (5), must be made no later than 30 days before physical dispossession. If there is a dispute after the payment is made, the dispute shall be resolved at an apportionment hearing held before physical dispossession.

(7) The following special provisions apply if the surrender of possession of property pursuant to the transfer of title to the property in condemnation proceedings requires the relocation of the owner or another occupant:

(a) If the surrender or possession of property requires the relocation of any individual who occupies a residential dwelling on the property, the individual shall not be required to move from his or her dwelling unless he or she has had a reasonable opportunity not to exceed 180 days after the payment date of moving expenses or the moving allowance provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling.

(b) However, if the agency is complying with applicable federal regulations and procedures regarding payment of compensation or relocation requirements, those federal regulations and procedures take precedence over any conflicting provisions in this section.

(8) As used in this section, "comparable replacement dwelling" means any dwelling that is all of the following:

(a) Decent, safe, and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the individual.

(d) Functionally equivalent.

(e) In an area not subject to unreasonable adverse environmental conditions.

(f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

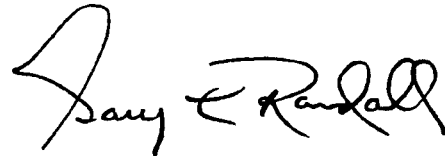
Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

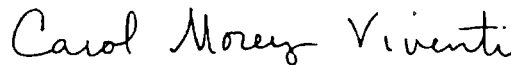
(a) House Bill No. 5817.

(b) House Bill No. 5818.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor

Act No. 438  
Public Acts of 2006  
Approved by the Governor  
October 3, 2006  
Filed with the Secretary of State  
October 5, 2006  
EFFECTIVE DATE: December 23, 2006

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Lemmons, III, Drolet, Jones, Gosselin, Toboeman, Stahl, Brandenburg, Baxter, Elsenheimer, Rocca, Mortimer, Huizenga, Lipsey, Acciavatti, Waters, Plakas, Anderson, Stewart, Zelenko, Kolb, Kooiman, Meyer, Hummel, Adamini, Brown, Hunter, Farrah, Pastor, LaJoy, Bieda, Wojno, Clack, Condino, Vagnozzi, DeRoche, Taub, Accavitti, Garfield, Hune, Gleason, Caswell, Shaffer, Hoogendyk, Nofs, Ward, Byrum, Steil, Sak, Moolenaar, Palsrok, Gillard, Casperson, Dillon, Ball, Cheeks, Espinoza, Gonzales, Hildenbrand, Kahn, Leland, Lemmons, Jr., Marleau, Mayes, McDowell, Moore, Palmer, Polidori, Schuitmaker, Sheltroun and Spade**

## **ENROLLED HOUSE BILL No. 5820**

AN ACT to amend 1980 PA 87, entitled "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," by amending section 8 (MCL 213.58), as amended by 1996 PA 474.

*The People of the State of Michigan enact:*

Sec. 8. (1) Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed or is denied and the right to appeal has terminated or if interim possession is granted under section 9, the court shall order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Except as provided in subsections (2) and (3), if a motion for review under section 6 is not filed, the court shall, within 30 days, order the escrowee to pay the money deposited under section 5 for or on account of the just compensation that may be awarded under section 13. Upon the motion of any party, the court shall apportion the estimated compensation among the claimants to the compensation.

(2) Except as provided in subsection (5), if the agency reserves its rights to bring a state or federal cost recovery claim against an owner, under circumstances that the court considers just, the court may allow any portion of the money deposited under section 5 to remain in escrow as security for remediation costs of environmental contamination on the condemned parcel. An agency shall present an affidavit and environmental report establishing that the funds placed on deposit under section 5 are likely to be required to remediate the property. The amount in escrow shall not exceed the likely costs of remediation if the property were used for its highest and best use. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims.

(3) Notwithstanding any order entered by the court requiring money deposited pursuant to section 5 to remain in escrow for the payment of estimated remediation costs of contaminated property, the funds in escrow, plus interest

subject to section 15, shall be released among the claimants to the just compensation under circumstances that the court considers just, including any of the following circumstances:

(a) The court finds that the applicable statutory requirements for remediation have changed and the amount remaining in escrow is no longer required in full or in part to remediate the alleged environmental contamination.

(b) The court finds that the anticipated need for the remediation of the alleged environmental contamination is not required or is not required to the extent of the funds remaining on deposit.

(c) If the remediation of the property is not initiated by the agency within 2 years of surrender of possession pursuant to section 9 and the agency is unable to show good cause for delay.

(d) The costs actually expended for remediation are less than the estimated costs of remediation or less than the amount of money remaining in escrow.

(e) A court issues an order of apportionment of remediation responsibility.

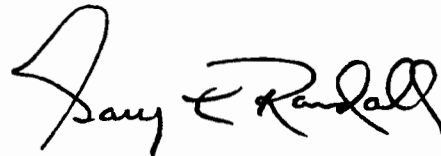
(4) If the court orders the agency to reverse its election under section 6a(1), the court shall order the escrowee to pay the amount of the revised good faith written offer for or on account of the just compensation that may be awarded pursuant to section 13, and to pay the balance of the escrow to the agency. If the agency seeks possession before the court decides whether to reverse the agency's election or before submitting a revised good faith offer, the agency may request that the court order a portion of the escrow withheld in anticipation of a reduction in the revised good faith offer, with the balance to be paid by the escrowee for or on account of the just compensation that may be awarded pursuant to section 13. If the court denies the request to reverse the agency's election or when the revised good faith offer is submitted, the court shall order the escrowee to pay any unpaid portion of it for or on account of the owner and to pay any balance to the agency.

(5) Subsections (2) and (3) do not apply to money deposited under section 5 in escrow for the payment of just compensation for an owner's principal residence, if the principal residential structure is actually taken or the amount of the property taken leaves less property contiguous to the principal residential structure than the minimum lot size if the local governing unit has implemented a minimum lot size by zoning ordinance. This subsection does not limit or expand an owner's or agency's rights to bring federal or state cost recovery claims. As used in this subsection, "principal residence" means a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.

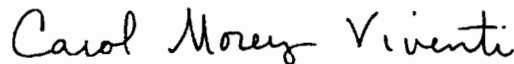
Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5821 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor

Act No. 439  
Public Acts of 2006  
Approved by the Governor  
October 3, 2006  
Filed with the Secretary of State  
October 5, 2006  
EFFECTIVE DATE: December 23, 2006

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. McConico, Tobocman, Drolet, Green, Gosselin, Stahl, Brandenburg, Baxter, Elsenheimer, Mortimer, Rocca, Huizenga, Lipsey, Acciavatti and Jones**

# **ENROLLED HOUSE BILL No. 5821**

AN ACT to amend 1980 PA 87, entitled "An act to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts," by amending section 5 (MCL 213.55), as amended by 1996 PA 474.

*The People of the State of Michigan enact:*

Sec. 5. (1) Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. At the same time, if the taking of the property might require relocation, the agency shall provide written notice to the occupants of the property stating that an eminent domain proceeding has commenced and outlining the occupants' basic legal rights in the process, including, but not limited to, the fact that any person who has a leasehold interest of less than 6 months is entitled to a \$3,500.00 moving allowance as provided under section 2 of 1965 PA 40, MCL 213.352, and that an individual who is a residential occupant may not be displaced until moving expenses or a moving allowance is paid as provided under 1965 PA 40, MCL 213.351 to 213.355, and the person has had a reasonable opportunity, not to exceed 180 days after the payment date of moving expenses or the moving allowance as provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. If the owner fails to provide documents or information as required by subsection (2), the agency may base its good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order under subsection (2). The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency

established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. As used in this subsection, "comparable replacement dwelling" means any dwelling that is all of the following:

- (a) Decent, safe, and sanitary.
- (b) Adequate in size to accommodate the occupants.
- (c) Within the financial means of the individual.
- (d) Functionally equivalent.
- (e) In an area not subject to unreasonable adverse environmental conditions.

(f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

(2) During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than \$1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified in subsection (1). The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request.

(3) In determining just compensation, all of the following apply:

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

(b) The parties shall exchange the agency's updated appraisal reports, if any, and the owner's appraisal report within 90 days after the expiration of the period for filing written claims, unless a later date is set by the court in accordance with section 11(1) for reasonable cause. If the agency believes that the information provided by the owner is not sufficient to allow the evaluation of the claim, the agency may request additional information from the owner and, if that information is not provided, may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. If the owner fails to provide sufficient information after being ordered to do so by the court, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely information when it determines the maximum reimbursable attorney fees under section 16.

(c) For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's

continuing duty to supplement that information as it becomes available. The owner shall provide all supplementary information at least 90 days before trial, and the court shall afford the agency a reasonable opportunity for discovery once all supplementary information is provided and allow that discovery to proceed until 30 days before trial. For reasonable cause, the court may extend the time for the owner to provide information to the agency and for the agency to complete discovery. If the owner fails to provide supplementary information as required under this subdivision, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely supplemental information when it determines the maximum reimbursable attorney fees under section 16.

(d) After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the claim, or reject the claim. If the agency establishes an amount it believes to be just compensation for the claim, the agency shall submit a good faith written offer for the claim. The sum of the good faith written offer for all claims submitted under this subsection or otherwise disclosed in discovery for all items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16.

(e) If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim.

(f) A residential tenant's leasehold interest of less than 6 months in the property is not a compensable claim under this act.

(4) In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

(a) A plan showing the property to be taken.

(b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.

(c) The name of each known owner of the property being taken.

(d) A statement setting forth the time within which motions for review under section 6 shall be filed; the amount that will be awarded and the persons to whom the amount will be paid in the event of a default; and the deposit and escrow arrangements made under subsection (5).

(e) A declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include all of the following:

(i) A description of the property to be acquired sufficient for its identification and the name of each known owner.

(ii) A statement of the estate or interest in the property being taken. Fluid mineral and gas rights and rights of access to and over the highway are excluded from the rights acquired unless the rights are specifically included.

(iii) A statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired.

(iv) Whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property.

(5) When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court under section 8.

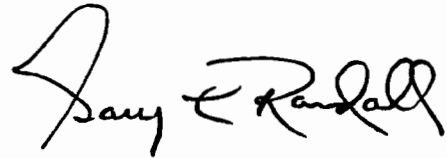
(6) If the property being taken is a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the agency is obligated to pay an additional amount to the owner or owners, which shall be deposited along with the amount estimated to be just compensation as provided in subsection (5). The additional amount shall be determined by subtracting the taxable value from the state equalized value, multiplying that amount by the total property tax millage rate applicable to the property taken, and multiplying that result by the number of years the owner or owners have owned the principal residence, but not more than 5 years.

(7) As used in this section, "taxable value" means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

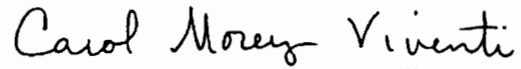
Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5820 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor